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|  <b>NEW YORK</b><br>STATE OF<br>OPPORTUNITY. <b>Thruway Authority</b> | <b>GENERAL POLICY</b> | SECTION TITLE   | NUMBER<br><b>25-6-02</b> |
|  |                       | <b>POLICIES – MANAGEMENT OF PROPERTY</b>                      |                          |
| APPROVED<br><br><b>BOARD MEETING NUMBER: 726</b><br><b>RESOLUTION NUMBER: 6129</b><br><b>DATE: March 27, 2017</b>                                      |                       | SUBJECT<br><br><b>THRUWAY REAL PROPERTY MANAGEMENT POLICY</b> |                          |

## I. INTRODUCTION

Pursuant to Article 2, Title 9 of the Public Authorities Law, the New York State Thruway Authority (Authority) is responsible for the financing, construction, reconstruction, improvement, development, maintenance and operation of the highway system known as the Thruway. In furtherance of such responsibilities, the Authority has the power to acquire and hold in the name of the State, by purchase or appropriation, real property, or rights or easements in such real property, and to sell, exchange or otherwise dispose of real property not necessary for its corporate purposes, or whenever the Board shall determine that it is in the interest of the Authority. The Authority also has the power to lease, or to grant Permits to occupy, real property not presently required for Thruway purposes but held for future use in carrying out its corporate purposes, upon such terms and conditions and uses as the Board shall determine.

The purpose of this Policy is to: detail the Authority’s operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of real property, the acquisition of real property and the issuance of Permits associated with the Thruway; and authorize the development of Standard Operating Procedures (SOPs) for the purpose of implementing this Policy.

## II. DEFINITIONS

### A. Transactions

For purposes of this Policy, Transactions shall include, but not be limited to, Acquisitions, Disposals, the issuance of Permits, the obtaining of permits or licenses to access or use real property not under the jurisdiction of the Authority, and Transfers of Jurisdiction.

### B. Disposals

Disposals shall include, but not be limited to, the sale of real property, the transfer of any beneficial interest in real property such as leases or easements, and the exchange of real property. Disposals shall not include the transfer of real property secured by a loan or other financial obligation of another party. Disposals shall not include Permits or Transfers of Jurisdiction.

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### C. Acquisitions

Acquisitions are Transactions whereby the Authority acquires and holds in the name of the State by purchase or appropriation, real property or rights or easements therein. Acquisitions shall not include the obtaining of permits or licenses to access or use real property not under the jurisdiction of the Authority.

### D. Permits Issued by the Authority

Permits issued by the Authority grant revocable privileges to use or access real property under the jurisdiction of the Authority. Permits may be issued where the real property is not presently required for Thruway purposes, but held for future use in carrying out its corporate purposes. Permits do not transfer a beneficial interest in real property. Permits are revocable in part to assure availability upon demand of the real property for Authority purposes. Permits include Occupancy and Work Permits.

#### 1. Occupancy Permit

An Occupancy Permit is a revocable at will instrument that authorizes the use of real property under the jurisdiction of the Authority.

#### 2. Work Permit

A Work Permit is a revocable at will instrument that authorizes construction, maintenance, inspection, survey, or other type of work or short term activity on real property under the jurisdiction of the Authority.

### E. Permits or Licenses Obtained by the Authority

Permits or licenses obtained by the Authority are revocable instruments that allow the Authority to access or use real property that is not under the jurisdiction of the Authority in order to carry out its corporate purposes. Permits or licenses do not grant the Authority a beneficial interest in real property and are not considered leases, easements or other Acquisitions.

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#### F. Transfers of Jurisdiction

Transfers of Jurisdiction are Transactions between the Authority and other State governmental entities where jurisdiction over real property is transferred and reassigned on such terms and conditions as the Authority and the NYS Office of General Services deem proper, but the title to the real property remains in the name of the people of the State of New York.

### III. GENERAL LEGAL REQUIREMENTS

All Transactions shall comply fully with applicable State, federal, and local laws, rules and regulations, including but not limited to: Article 2, Title 9 of the Public Authorities Law, Article 9, Title 5-A of the Public Authorities Law, the Lobbying Procurement Act, the requirements of the Authority's General Revenue Bond Resolution, and other applicable laws, rules, regulations, policies, procedures and executive orders.

### IV. GENERAL PRINCIPLES

- A. The Authority shall maintain adequate inventory controls and accountability systems for all real property under its control.
- B. The Board shall approve all Transactions under the Authority's jurisdiction, except as otherwise delegated (see Section VII. Responsibilities and Authorizations).
- C. Transactions involving real property shall be consummated as promptly as possible. Unless otherwise provided by the Board, Board authorization for a Transaction shall be deemed expired one year following the date of such authorization unless the parties have executed a contract acceptable to the Authority for such Transaction within such one-year period. Expiration of Board authorization for a Transaction shall mean that the Transaction may no longer be consummated pursuant to such expired authorization absent further action of the Board. The Executive Director shall provide periodic reports to the Board regarding expired Transactions.
- D. The Authority may dispose of any real property not necessary for its corporate purposes or whenever the Board shall determine that such Disposal is in the interest of the Authority.

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- E. A Transaction must be resubmitted to the Board during the one-year period of authorization provided in IV.C. if any of the following circumstances occur and the Executive Director determines that the Transaction should be progressed:
1. If, in the Executive Director's determination, the circumstances change following Board action and, as a result, material Board approved terms and conditions cannot be followed.
  2. If, in the Executive Director's determination, the background information about the Transaction presented to the Board changes in any material way.
- F. Notwithstanding anything to the contrary contained in this Policy, if the Executive Director determines that it is in the best interests of the Authority to stop progression of a Board approved Transaction during the one-year period of authorization provided in Section IV.C., the Executive Director may cancel the Transaction. An information report will then be provided to the Board, at its next scheduled meeting, detailing the reasons that the Transaction was cancelled.
- G. 1. No asset owned, leased or otherwise in the control of the Authority may be sold, leased, or otherwise alienated for less than its fair market value except if:
- (a) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
  - (b) the purpose of the transfer is within the purpose, mission or governing statute of the Authority; or
  - (c) in the event the Authority seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the Authority's mission, purpose or governing statute, the Authority shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly. Denial by the governor shall take the form of a signed certification by the governor. Denial by either house of the legislature shall take the form of a resolution by such house. The governor and each house of the legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through

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June, provided that if the legislature receives notification of a proposed transfer during the months of July through December, the legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the governor, senate, and assembly, the Authority may effectuate such transfer.

2. In the event a below fair market value asset transfer is proposed, the following information must be provided to the Authority Board and the public:
  - (a) a full description of the asset;
  - (b) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Authority Board;
  - (c) a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;
  - (d) a statement of the value to be received compared to the fair market value;
  - (e) the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (d) of this paragraph 2 of Section IV.G., a statement of the value to the private party; and
  - (f) the names of any other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.
  
3. Before approving the disposal of any property for less than fair market value, the Authority Board shall consider the information described in paragraph 2 of this Section IV.G. and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.
  
- H. The Authority shall use a competitive process open to the public for all Disposals, except in limited circumstances. The Authority shall document the basis for progressing a Disposal without use of a public competitive process.

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All Disposals or contracts for disposal of real property of the Authority shall be made after publicly advertising for bids except in limited circumstances where Disposals and contracts for disposal may be negotiated or made by public auction without public advertising for bids.

One of the following conditions must be met to dispose or contract for the disposal of real property through negotiation or public auction without public advertising for bids:

1. The fair market value of the real property does not exceed fifteen thousand dollars (\$15,000);
  2. Bid prices after advertising are not reasonable, either as to all or some part of the real property, or have not been independently arrived at in open competition;
  3. The Disposal will be to the State or any political subdivision, and the estimated fair market value of the real property and other satisfactory terms of disposal are obtained by negotiation;
  4. Under those circumstances permitted by Section IV.G. of this Policy; or
  5. The action is otherwise authorized by law.
- I. The Authority shall create a clear and comprehensive record for each Transaction that documents its compliance with this Policy. Such record shall be maintained in a manner and for a period consistent with the applicable document retention policy.

## **V. GENERAL PRACTICES**

### **A. Transactional Analyses**

Every proposed Transaction shall have a documented analysis conducted that will address all salient real property-related issues, and that will consider all applicable alternatives listed in Section V.B. below.

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## B. Types of Transactions and the Appropriate Use Thereof

### 1. Disposals

The Authority may receive direct inquiries for purchasing Thruway real property (e.g., easement, fee) or may determine on its own that Thruway real property is no longer needed for its corporate purposes or that disposition is in the best interest of the Authority.

The Authority may lease real property not presently required for Authority purposes but held for future use in carrying out its corporate purposes.

Disposals may be performed by the Commissioner of General Services on behalf of the Authority when the Authority has entered into an agreement with the Commissioner of General Services pursuant to Article 9, Title 5-A of the Public Authorities Law and all other applicable provisions of the Public Authorities Law.

### 2. Acquisitions

The Authority may acquire real property (e.g., fee, lease, easement) for a variety of purposes including, but not limited to, construction, improvement, and operation of the Thruway.

Real property may be acquired by purchase or by exercise of the power of eminent domain. When the need arises for the Authority to acquire real property via exercise of the power of eminent domain, the Authority shall take all steps to carry out the Acquisition in compliance with the Eminent Domain Procedure Law.

### 3. Permits Issued by the Authority

Permits may be issued where the real property is not presently required for Thruway purposes, but held for future use in carrying out its corporate purposes. Permits are revocable and used for Transactions where the real property needs to be available upon demand for Authority purposes. Unless otherwise authorized by the Executive Director or designee, where a Disposal is contemplated, an Occupancy or Work Permit will not be issued in advance of completion of the Disposal.

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Occupancy Permits shall be issued and administered in accordance with the Authority's Occupancy and Work Permit Accommodation Guidelines, and in such a way as to ensure that the Authority is receiving the appropriate level of revenue in accordance with the established Fee Policy for Thruway Occupancy Permits. Unless otherwise authorized by the Executive Director or designee, where the issuance of an Occupancy Permit is contemplated, a Work Permit shall not be issued in advance of the issuance of the Occupancy Permit.

4. Permits or Licenses Issued to the Authority

Permits or licenses may be issued to the Authority in order to allow the Authority temporary access to and use of real property not under its jurisdiction for work related to the improvement, construction, reconstruction, maintenance and operation of the Thruway when an Acquisition is not appropriate.

5. Transfers of Jurisdiction

Transfers of Jurisdiction shall be progressed on such terms and conditions as approved by the Board.

6. Transactions with Entities Providing Tourist Information

In accordance with Section 361-c of the Public Authorities Law, the Authority is required to provide tourist information services at all service areas where food is served. The Authority may authorize Transactions to provide such services. When the use of real property associated with the provision of these services generates revenue, consideration shall be required.

7. Amendments, Extensions, and/or Renewals of Existing Permits and Leases

Occupancy Permits shall be reviewed before the next annual payment date or as soon as practicable thereafter and, if necessary, revoked or redrafted to reflect this Policy and the requisite operational and/or administrative procedures.

Leases will be reviewed at the time of the next renewal and, if necessary, amended to reflect this Policy and the requisite operational and/or administrative procedures, consistent with the terms of the lease.



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### C. Use of Appraisals

1. No Disposal or Acquisition of real property, or any interest in real property, shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the Transaction.
2. At least one appraisal shall be conducted by an independent appraiser for all Disposals and Acquisitions. Two appraisals shall be conducted by independent appraisers if: (i) the appraised value of the real property is greater than three hundred thousand dollars (\$300,000); or (ii) it is deemed to be in the best interest of the Authority as determined by the Contracting Officer.
3. An appraisal shall be conducted or coordinated by authorized Authority staff for all Permits for which an appraisal is necessary.
4. When the need arises for the Authority to acquire real property via exercise of the power of eminent domain, the Authority shall comply with all appraisal requirements in the Eminent Domain Procedure Law.

### D. Advertising and Bidding for Disposals.

When advertising for bids is required: (1) the advertisement shall be made at such time, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the real property; (2) all bids shall be publicly disclosed at the time and place stated in the advertisement; and (3) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State and the Authority, price and other factors considered, provided, that any and all bids may be rejected when it is in the public interest to do so.

### E. Documenting Disposals by Negotiation

At least 90 days before a Disposal is consummated, an explanatory statement for each Disposal by negotiation shall be prepared and distributed by the Contracting Officer in accordance with Article 9, Title 5-A of the Public Authorities Law detailing the circumstances of the Disposal, including but not limited to, the proposed price. The statement shall be prepared and distributed prior to bringing the Transaction to the Board for approval.

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The following Disposals by negotiation require an explanatory statement:

1. Any real property that has an estimated fair market value in excess of one hundred thousand dollars (\$100,000), except that any real property disposed of by lease or exchange shall only be subject to clauses 2 and 3 below.
2. Any real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars (\$15,000).
3. Any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

F. Review by the Office of the State Comptroller (OSC)

The following Transactions shall be submitted to OSC for review and approval:

1. Disposals of real property or interests therein where the value exceeds twenty-five thousand dollars (\$25,000).
2. Acquisitions of real property or interests therein where the total payment exceeds fifty thousand dollars (\$50,000).

G. Review of Environmental Impacts

In accordance with the State Environmental Quality Review Act (SEQRA) and the National Environmental Policy Act (NEPA), the Authority shall consider potential environmental impacts and permit requirements associated with any Transaction.

H. Review by Other Agencies

Transactions shall be coordinated with local, State and federal agencies as may be required by statute or regulation. Such agencies include, but are not limited to: Federal Highway Administration, U.S. Army Corps of Engineers, NYS Department of Transportation, NYS Office of General Services, NYS Department of Environmental Conservation and NYS Office of Parks, Recreation and Historic Preservation.

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## I. Reports

The Authority will develop and distribute reports regarding real property management activities as required by law, including but not limited to, annual inventory reports, annual real property acquisition and disposition reports, and disposal by negotiation statements.

## VI. PROCUREMENT OF REAL PROPERTY BY EMPLOYEES

Authority employees may not have any personal interest in, or engage in, any activity that would create or appear to create a conflict with the proper discharge of their public duties. It is important, even in the absence of any impropriety, that no appearance of impropriety is given. Therefore, pursuant to the Public Officers Law, all Authority employees, their spouses and any children and stepchildren under age 18 are prohibited from procuring Authority real property or otherwise securing such property through the use of an agent or other third party.

In addition, Authority employees, other than staff members identified in this Policy or the SOPs as having responsibilities related to the management of real property, shall not disclose to any non-employee any information that they obtain regarding such property due to the nature of their employment. Any disclosure by such authorized staff shall only be made in the course of the proper discharge of their official duties.

## VII. RESPONSIBILITIES AND AUTHORIZATIONS

- A. The Board shall designate a Contracting Officer who is responsible for compliance with and enforcement of this Policy as it applies to all Transactions.
- B. The Executive Director is authorized to interpret, implement, and administer this Policy and shall develop SOPs necessary to carry out its intent. These SOPs should identify the roles and responsibilities of Authority personnel who implement and administer this Policy and define the manner in which those responsibilities are to be fulfilled.

The Executive Director is also authorized to oversee the actions of Authority staff to ensure compliance with applicable laws, rules and regulations, and with this Policy.

- C. The Chief Engineer is authorized to consummate acquisitions and the Chief Financial Officer is authorized, upon the written request of the Chief Engineer, to consummate Disposals that may be necessary to progress capital projects in accordance with the

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provisions of the annual Contracts Program approved by the Board. All such Transactions shall be progressed in accordance with the provisions of this Policy. In general, Board approval shall not be required for such Transactions, provided however, Board approval shall be required for all Disposals for less than fair market value.

- D. The Chief Financial Officer, consistent with Resolution No. 5911, is authorized to approve Disposals valued at fifteen thousand dollars (\$15,000) or less and to take all steps necessary to implement same, provided that fair market value is obtained in exchange for such Disposals and provided further, that all such Disposals shall comply with all applicable laws, this Policy and the SOPs adopted pursuant to this Policy.
- E. The Contracting Officer or designee is authorized to approve real property Occupancy Permits.
- F. The Director of Maintenance and Operations or designee is authorized to approve real property Work Permits and to obtain permits or licenses to access or use real property not under the jurisdiction of the Authority for maintenance and operations purposes.
- G. The Director of Real Property Management is authorized, in consultation with the Contracting Officer, to interpret the SOPs and to resolve any questions among staff regarding the SOPs.

## **VIII. PENDING DISPOSALS AND ACQUISITIONS**

All Disposals and Acquisitions approved by the Board prior to the effective date of this Policy that are still pending final execution shall be reevaluated by the Contracting Officer to ensure compliance with this Policy. If, upon reevaluation, the terms and conditions as authorized by the Board resolution do not comply with this revised Policy, the Contracting Officer must promptly prepare a report to the Executive Director and the Board detailing the reasons that the item(s) can or cannot be progressed. When an item cannot be progressed, the Contracting Officer, in consultation with the Executive Director, must seek further direction from the Board which may result in the item being amended, withdrawn or otherwise resolved.